Cr. Appeal - 294/96 (2)

XII-189 / (Jail)
J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench (Criminal)

No. 3402/96 Name મુન્ના ઉર્ફે

Father's name ચાંદ નાથ ખાકિ પર કેલા બાબુ મનેકુમાર

Residence ભિલા સરડુઆ (મધુ) Age ૨૬ વર્ષ

Sentenced to આજીવન કારાવાસ On ૨૨/૧૧/૯૬

Under section ૩૦૨ મો દુષિ by આજીવન કારાવાસ

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ૨૨/૧૧/૯૬

2 Date on which copy received ૩૧/૧૧/૯૬

3 Date on which Appeal sent ૨/૧૨/૯૬

4 Whether the prisoner wishes to be represented or ~~not~~ - Yes / No

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No. 3402/96 Name મુન્ના ઉર્ફે ભારવાડ

Confined in ભોપાલ Jail સાગર (મધુ)

No. 107 / 4001 Dated 199 6 ૨/૧૨/૯૬

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ અતિરિક્ત જિલ્લા ન્યાયાધીશ સાગર (મધુ) together with which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

સેશન્સ ૨૫૨/૯૬૨૦/૩૦૧૩
138/94

Superintendent
જિલ્લા કારાગૃહ (મ.પ્ર.)

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No .....

(10)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. App. No. 294/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

2.3.2006

Shri Abhay Tiwari, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State.

Oral judgment dictated on *Dais*.

Per Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. questioning the legality & correctness of the judgment dated 22.1.1996 passed in S.T. No.138/94 by which learned Additional Sessions Judge, Manendragarh after holding the appellant guilty of causing death of Dhirsai Agariya convicted him under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 17.11.1993 at about 4.00 p.m. deceased Dhirsai went towards the forest to graze the cattle, however, he did not return and cattle returned without him. Dead body of Dhirsai was discovered on 19.11.1993 by Shanichari Bai (PW-2) wife of deceased, from the forest, as per information given by the villagers. On the basis of information given by Shanichari Bai, merg intimation of Ex.P-6 was recorded and thereafter on the basis of merg intimation Crime No.429/93 for commission of offence under Section 302/34 of the IPC was registered against Karan Sai & Munna Uraon vide Ex.P-5. During investigation, inquest over the dead body of deceased Dhirsai was performed in presence of the witnesses. Dead body was sent for postmortem examination to Government Hospital, Manendragarh, where Dr. S.N. Gupta (PW-1) conducted the

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postmortem over the body of deceased and submitted his report of Ex.P-1. During postmortem, Dr. Gupta noticed three incised wounds over the left upper arm on the anterior lateral aspect, obliquely placed, upper part of the sternum bone in the middle of the chest, upper end of the sternum is cut, transversely placed and in the neck just at the level of thyroid cartilage whole neck is separated from the head only a flap of skin is present on the left side of the neck and he gave his opinion that mode of death was syncope due to extensive injury and death was homicidal in nature. After taking the appellant into custody, his memorandum of Ex.P-4 was recorded and in pursuance of that the weapon of offence, axe was seized vide Ex.P-4A. Seized weapon was sent to the Assistant Surgeon for his opinion whether the injuries present over the dead body of deceased, as described in the postmortem report, could be caused by the seized axe. In reply to above query, the doctor vide Ex.P-2 opined that the injuries mentioned in the report might be caused by sharp edge of the axe. Blood stained clothing of the deceased was seized vide Ex.P-8. Blood stained soil and plain soil was seized from the spot vide Ex.P-7. Accused was arrested on 29.12.1993 vide Ex.P-9. Seized articles namely blood stained clothing of the deceased, weapon of offence, axe and the soils seized from the place of incident were sent for chemical examination to Forensic Science Laboratory, Raipur and as per FSL report dated 10.1.1994 blood was found in the clothing of the deceased and the axe. Articles were further sent to the Serologist to ascertain the origin of blood and group of blood, however, the Serologist vide his report dated 26.10.1994 submitted that the origin of blood and blood group present over the items could not be determined, as the blood samples were found to be disintegrated.

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After completing the investigation, charge sheet was filed in the Court of learned Additional Chief Judicial Magistrate, Manendragarh, who in turn committed the case to learned Sessions Judge, Ambikapur from where learned Additional Sessions Judge, Manendragarh received the case on transfer for trial. Charge under Section 302 of the IPC was framed against the appellant. The appellant abjured his guilt.

The prosecution in order to establish the charge against the appellant examined six witnesses in all. Thereafter, the statement of accused was recorded under Section 313 of Cr.P.C., in which accused denied the circumstances appearing against him in the prosecution case, pleaded innocence and stated that he has been falsely implicated. Learned trial court after hearing the counsel for the parties convicted and sentenced the appellant as mentioned above.

Homicidal death of deceased Dhirsai is not in dispute. Even otherwise, from perusal of the statement of PW-1 Dr. S.N. Gupta, who has performed the postmortem over the dead body of deceased, the death of Dhirsai was homicidal in nature is established.

Learned trial court convicted the appellant on the basis of circumstantial evidence, as there was no eye-witness to the incident. Circumstances relied upon by the prosecution which have been held to be proved by the trial court may be summarized as under:-

1. Appellant had animosity with the deceased, as the appellant suspected that deceased practiced witchcraft on him.

2. Appellant made extra judicial confession before Lallu Uraon (PW-5), who is maternal uncle of the appellant.

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3. That, on the basis of information given by the appellant in his memorandum the weapon of offence, axe was seized.

Learned counsel for the appellant submits that in order to convict any accused on the basis of circumstantial evidence, the prosecution is required to establish each and every circumstance as an independent fact beyond reasonable doubt. The circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof. However, the prosecution has failed to prove any independent circumstance on the basis of which the appellant has been convicted. He further argued that on the basis of complaint of Shanichari Bai, wife of the deceased, offence was registered against Karan Sai & Munna Uraon, however, the statement of Karan Sai has not been recorded during trial. From the document of Ex.D-1 it would be evident that the deceased had lodged a report in the police station on 26.8.1993 against Karan Sai, which was registered in the police diary of the police station and therefore, there was a motive to Karan Sai to commit the offence in question. He further argued that the statement of PW-5 Lallu Uraon was recorded on 27.11.1993

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i.e. 8 days after the recovery of dead body of deceased and there is no explanation for delay, therefore, the alleged extra judicial confession also becomes doubtful. He further argued that memorandum of the appellant was recorded on 29.12.1993 though suspicion was expressed against the appellant on 19.11.1993 itself and therefore, the memorandum and in pursuance of the memorandum recovery of weapon of offence, axe is also suspicious. Even otherwise, the seized weapon was sent for examination to the Serologist and there is no evidence to the effect that the blood, which was present over the weapon, was of the same origin as that of the deceased. PW-3 Kripal Singh, before whom the memorandum was recorded, has stated that in-fact on his enquiry the appellant has stated about the weapon of offence in the village and thus memorandum of the appellant recorded under Section 27 of the Evidence Act is not in accordance with the law.

On the other hand, learned counsel for the State supports the judgment passed by the trial court.

We have heard learned counsel for the parties.

So far as the first circumstance is concerned, to establish this circumstance the prosecution relies upon the statement of Shanichari Bai (PW-2) wife of the deceased, who has stated that on the date of incident she had gone away in connection with her work, however, her husband was in the home and was engaged in threshing. When she returned, she did not find her husband in the house, she waited for him whole night, but he did not return. On next day also she searched her husband whereupon Jalal Singh informed her that dead body of her husband is lying near the dam, whereupon she went there and discovered the dead body. She lodged the

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report. She has further stated that accused had animosity towards her husband, as he suspected that he practiced witchcraft. However, in the cross-examination she has stated that Karan Sai of her village also suspected that her husband practiced witchcraft and he is also having animosity towards her husband. Even the villagers alleged that her husband practiced witchcraft. Therefore, on the basis of the evidence of this witness it cannot be held for certainty that the prosecution has been able to establish the motive on the part of the appellant to commit the offence.

So far as the second circumstance regarding confession of the appellant before PW-5 Lallu Uraon is concerned, PW-5 has stated that the accused is his nephew in relation. There was rumor in the area that the appellant has committed murder. On the next day when appellant came to his house, he asked him that the villagers are claiming that you have murdered Dhirsai Agariya, what is the fact, whereupon accused stated in the affirmative and said that he has murdered Dhirsai Agariya. On being advised to go to the police and not to hide, he stated that he shall go to the police but after leaving his wife to her parental house and thereafter he left his house at about 4 p.m. He has further stated that confession was made by the accused in presence of his wife. From the statement of this witness, it appears that the confession was made to this witness on the next day when the dead body of deceased was recovered i.e. on 20.11.1993, however, he did not give this information to the police and the statement of this witness was recorded only on 27.11.1993. In reply to a specific question asked by the defence that when he had come to know that accused had committed murder, why he did not lodge the report in the police station, this witness has stated that police have already come to know about this fact from Karan Sai

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that the accused had come to them and when police came to enquire from him, he narrated the same to police. This witness is brother-in-law of Karan Sai against whom also suspicion was alleged by the complainant in the F.I.R. and Karan Sai has not been examined during trial. Thus, in the over all circumstances, in view of the fact that this witness did not disclose about the extra judicial confession to the police and further considering that Karan Sai has not been examined during trial, the alleged extra judicial confession made before PW-5 Lallu Uraon becomes doubtful.

So far as the third circumstance regarding memorandum of recovery of weapon of offence is concerned, as has already been pointed out by learned counsel for the appellant that the memorandum was recorded after more than a month of the incident i.e. on 29.12.1993, further considering the fact that the seizure of axe on the basis of memorandum is doubtful, there is no evidence of Serologist that the weapon in question contained human blood, we are of the opinion that it cannot be safe to rely upon the third circumstance in order to hold the appellant guilty of offence in question and thus we are of the considered opinion that the prosecution has failed to establish the involvement of the appellant in commission of offence on the basis of the above circumstantial evidence.

In the result, the instant appeal succeeds and the judgment of the trial court convicting appellant Munna Uraon under Section 302 of the IPC and sentencing him to undergo imprisonment for life is hereby set aside and we direct that appellant be set at liberty forthwith, if not required in connection with any other offence.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge